IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 5905 OF 1991

A. Razak Manulal Patvekari & Anr. .Petitioners

Vs.

Nagappa C. Bembalgi through LRs. . ... Respondent

Mr. Girish S. Godbole, Advocate for the Petitioner.

CORAM : D. G. DESHPANDE, J.

DATE : OCTOBER 5, 2006.

P.C.

. Heard Mr. G. S. Godbole, advocate for the Petitioners. Nobody is present for the Respondent. Petitioner is the landlord. He purchased the suit property in 1981 and then gave notice to the Respondent / original tenant, asking them to vacate the premises, on the ground of bona fide occupation. This notice was replied to by the defendant and they contended that they are running the school in the premises from the beginning. This suit came to be filed for eviction of the tenant from the suit premises on the ground of bona fide occupation. The trial Court has decreed the suit of the plaintiff against tenant. The tenant filed appeal before the District Judge and the District Judge allowed the appeal and set aside decree for possession. Hence, the petition.

2. The main contention raised by the petitioner

is that both the courts below have given finding in his favour i.e. landlord. Petitioner has succeeded in proving his bona fide need. However, actually appellate Court came to wrong conclusion regarding comparative hardship, as between the landlord and the tenant, and therefore, finding of the appellate court is wrong and perverse.

3. The Advocate for Respondent pointed out that the suit premises, before the petitioner purchased them, were let out to an individual i.e. the original tenant Nagayya. The premises were not let out to any institution for running a school, and therefore, even though since 1965 defendants were running school, hardship of the landlord and hardship of the tenant individual should have been considered by the appellate Court. In any case the hardship of the students taking education in the school should not have been considered because the school was never tenant. Mr. Godbole also drew my attention to the cross examination of the defendant and contended that if the defendants were contending that the premises were taken for running the school, then it was obligatory on the defendants to examine the original owner who could have thrown light upon the real issue. However, defendant did not examine original tenant.

There was no evidence , worthy of acceptance that the school premises were taken on rent for the purpose of school, right from the beginning. Mr. Godbole also drew my attention to the finding of the appellate Court regarding comparative hardship and contended that the appellate Court committed grave error in considering comparative hardship of the school. When, in fact shool was never tenant of the premises. In short submission of Mr. Godbole is that even if the Courts can consider comparative hardship vis a vis landlord and tenant. The Court was not competent to consider it, in this case as between landlord and the school, that was running in the school premises, such school was not the tenant.

4. Following are the undisputed facts -

. Plaintiff was the resident of Solapur and original tenant / defendant Nagayya Bembalgi was also resident of Solapur. The plaintiff purchased the suit preoperty , City Survey No. 2347, comprising 225.7 Sq. Mt. area, with a structure in which 152 tin-sheets were used. The plaintiff purchased the property on 26-10-1981 from the previous owner Mallikarjun Nimbargi. On 30-11-1981 a notice was sent by the plaintiff, calling upon the defendant to vacate

the suit premises and pay the arrears of rent. The defendant gave reply to this notice and according to plaintiffs, they did not pay arrears, nor vacate the suit premises, and therefore, plaintiff filed the suit. The suit of the plaintiff was resisted by the defendant. They filed the detailed written statement. In paragraph 2 itself, defendants contended that the statement of the plaintiff that defendant was tenant in individual capacity , was a false and incorrect statement. The suit premises were taken by the defendant on 1-10-1965 on monthly rent of Rs. 60/- for the period of nine years for running a primary school. There were six tenants earlier in the premises when the defendant was called upon to vacate those premises, and after demolishing old structure standing on the site, the defendant invested huge amount and errected a structure, in order to enable him to run a school and then he was running a school accordingly. Defendants have also contended that even if the suit is decreed (this is an alternative submission), the defendants will be entitled to remove 152 tin sheets, wooden beams and other construction material, including electrical material, etc.

5. Upon these pleadings of the parties, the trial Court framed following issues -

1. Do the plaintiffs prove that they reasonably and bonafide require the suit property for their personal use and occupation?

2. To whom greater hardship would be caused?

First issue was about bona fide requirement of the plaintiff and second issue was about greater hardship as between plaintiff and the defendant.

6. In reply notice, defendant denied all the allegations in the plaintiff's notice. Then defendant contended that he was President of the Trust, which was running a school, in the suit premises, and they have spent Rs. 15,000 to 20,000 for reconstruction of the school.

7. It will be clear from the pleadings, particularly written statement that right from the beginning, stand of the defendant is that the premises were taken for the purpose of running school and school was being run since 1965. It was registered under the Co-operative Societies Act and also under the Bombay Public Trust Act. It is clear that

plaintiff was personally knowing that the school was being run in the premises. He has admitted in his cross examination that his son has taken education in the said school. Therefore, the fact that a primary school is being run in the suit premises, existence of society or Trust or all facts are within the knowledge of the Petitioner, right from the beginning that is not only from the date of purchase of property, but even prior thereto. In that view of the matter, it was necessary and obligatory for the plaintiff to examine the previous landlord, to disprove the contention of the defendant that the premises were taken for the purpose of running the school. Since now it is repeatedly strenuously urged by Mr. Godbole that not the school or any institution or Trust was the tenant of the suit premises, but an individual was the tenant. Then on the background of the aforesaid facts, it was necessary for the plaintiff to examine the previous owner.

8. It is easy to say that as defendant is individual, hardship of an individual could have been considered, but not of the school. But Court cannot lose sight of the fact that plaintiff/ petitioner purchased this property with full knowledge that primary school is being run at the said premises. The

appellate Court, therefore, rightly considered the aspect of comparative hardship and came to correct conclusion that on the point of hardship, plaintiff must fail and case must tilt in favour of the defendants.

9. Mr. Godbole tried to rely on the cross examination of the defendant, wherein he has admitted that there are 12 other schools and those schools are in that vicinity. Mr. Godbole tried to dilute the aspect of comparative hardship, by contending that students taking education in the school of defendant can be accommodated elsewhere. I do not think this could be a proper approach in the circumstance. Even though school is being run and there is nothing on record that it is being illegally run and when plaintiff purchased this property, with full knowledge then the bona fides of the appellant / plaintiff are required to be scrutinized. Even if the two courts below have given finding in favour of the plaintiff about that on the ground of comparative hardship, the courts below are justified in rejecting the contention of the plaintiff and dismissing his suit, so far as it relates to the decree of possession. The judgment of the appellate Court cannot be faulted. There is no error apparent, no perversity, on record. Therefore,

petition is dismissed. Rule is discharged. No orders as to costs.

[D. G. DESHPANDE, J.]